

Why Eliminating the Sunset Provision of Michigan's Post-Conviction DNA Testing Law, MCL 770.16, Protects Michigan Citizens

In 2001, Michigan passed a post-conviction DNA testing law to provide a clear avenue for wrongfully convicted individuals to prove their innocence through the testing of biological evidence. This law helps to ensure that the actual perpetrator of the crime is identified and brought to justice. Thus, MCL 770.16 protects both the rights and safety of Michigan citizens.

Michigan was one of the earlier states to pass a post-conviction DNA testing law. Now post-conviction DNA testing laws exist in all 50 states, giving us the benefit of knowing which provisions can be enhanced to improve justice. Eliminating the sunset provision of MCL 770.16 would strengthen Michigan's law by ensuring that wrongfully convicted individuals have meaningful access to DNA testing and that actual perpetrators are identified and prosecuted.

Remove the Sunset Provision

Michigan's post-conviction testing law contains a "sunset provision" that requires legislative action to extend the law. Since 2001, lawmakers have extended the law twice, with the current sunset slated for January 1, 2016. Michigan citizens deserve a permanent law that provides a pathway to justice. There are 12 states, including Michigan, which had sunset provisions in their original post-conviction DNA testing law. Ten states have since removed the sunset provision: AR, CT, DE, GA, ID, MN, OH, FL, NM, OR. *Louisiana is the only other state with a sunset provision.*

- **Advancements in DNA Testing**

Since the last extension of MCL 770.16, there have been significant advancements in DNA technology. The Michigan State Police Crime Laboratory has only had the capability for Y-STR DNA testing since April 2011. Y-STR testing targets the male DNA in a crime sample, and is particularly useful in rape cases. In late 2014, the Michigan State Police Crime Laboratory began using two new cutting-edge DNA testing kits. These kits are more sensitive and may render results from crime samples where previous DNA testing did not. These technologies, along with the use of "touch DNA," demonstrate that DNA testing will continue to improve. In turn, the ability to identify the perpetrators of crime through the Combined Offender Data Information System (CODIS) will increase. Post-conviction DNA testing ensures that the right person is held accountable for the most serious crimes. For this reason alone, there should not be an arbitrary sunset to post-conviction DNA testing. *See Doleac, Jennifer L., "The Effects of DNA Databases on Crime (January 1, 2015) <http://dx.doi.org/10.2139/ssrn.2556948>*

- **Eliminating the Sunset is Cost Effective.**

As DNA technology continues to improve, the resources and costs of testing continue to decrease. <http://www.forensicmag.com/articles/2010/02/new-tools-enhance-forensic-dna-casework-analysis>

The Western Michigan University-Cooley Innocence Project has screened over 5300 cases since MCL 770.16 was passed in 2001. The Project does not charge for its services and has contributed thousands of hours of free legal work, screening cases under MCL 770.16. In addition, the Project has used its 2009 federal grant award to help defray the costs of DNA testing.

On October 1, 2015, the Department of Justice awarded \$418,000 to the WMU-Cooley Innocence Project. These funds will support the location and testing of evidence in Michigan cases. Future federal grant funding is dependent upon access to post-conviction DNA testing.

If the sunset takes effect, innocent individuals will not have access to post-conviction DNA testing. In turn, they will be unable to prove their innocence and will remain incarcerated. Wrongful incarceration is a financial burden on the state. The average annual cost of incarceration of a Michigan prisoner is \$38,000. These costs are saved when an innocent individual is identified and released.

- **There Has Been No Burden on Michigan Courts**

When MCL 770.16 was enacted in 2001 the Cooley Innocence Project was established to review cases for strong claims of factual innocence under the statute. Since 2001, the Project has screened over 5300 cases and has filed 29 petitions for DNA testing. While some prisoners have filed petitions on their own, there is no evidence that petitions for DNA testing have burdened Michigan courts. The majority of cases have been carefully screened and vetted by the Cooley's innocence project. There has not been a flood of litigation in Michigan. (For a national perspective on the impact on courts: <http://www.csmonitor.com/layout/set/print/2006/0131/p03s03-usju.html>)

Due to the difficulty of locating court documents and finding evidence, screening of cases takes significant time.

In Michigan, disorganized property rooms and lost evidence make locating evidence particularly challenging. The recent attention to the untested rape kits in Detroit and the sheer volume of untracked evidence in Flint demonstrate that it takes years to audit and properly catalogue evidence.

<http://www.detroitnews.com/story/news/politics/2015/01/27/michigan-senate-gop/22405915/>

http://www.mlive.com/news/flint/index.ssf/2015/01/report_consultants_astounded_b.htm

The Project has had difficulty locating evidence in the majority of its cases; it can take years to locate evidence. For example, the Project has yet to confirm the existence of evidence in a 1987 Flint case.

The WMU-Cooley Innocence Project recently accepted 200 case referrals from the Innocence Project in New York. 40 cases are currently assigned to students for in-depth review. Approximately 10 cases are in the final review stage. It is not possible for these cases to be screened and filed before the current sunset date of January 1, 2016.

WMU-Cooley's 2015 "Postconviction Testing of DNA Evidence to Exonerate the Innocent" federal grant will support the location and screening of cases under MCL 770.16. Therefore, eliminating the sunset provision will allow the WMU-Cooley Innocence Project to continue to carefully screen and pursue strong claims of factual innocence through the use of the most-current DNA technology.

In sum, having a post-conviction testing law that expires no longer makes legal or economic sense. By eliminating the sunset provision of MCL 770.16, the interests of justice and safety are met.

Prepared by:

Marla Mitchell-Cichon
Director, WMU-Cooley Innocence Project

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